Division Bench

(1) CF 1002

**BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH**

**AT BILASPUR (CHHATTISGARH)**

**WRIT APPEAL NO. 03 /2007**

APPELLANT — Philmon, son of Loyaram, aged about 49 years, caste Uraon, resident of village Chiknipani, Tah. Pathalgaon, District Jashpur (CG)

RESPONDENT NO.1

S35/07 Sankha Jaiswal
F.R. No.
Presented by
dated 12/1/07

**VERSUS**

RESPONDENTS PETITIONER

1. Janki Kujur, widow of Late Nansai Caste – Uraon, aged about 42 years, resident of village Chiknipani, Tahsil Pathalgaon, District Jashpur (C.G.)

RESPONDENTS

2. Tubiyas Minj s/o Lorango Caste Uraon,
3. Dayaram son of Jhagruram, caste Uraon,
4. Devness, son of Matiyas, Caste Uraon,
5. Lalsai, son of Budhwa, caste Uraon,
6. Manoharlal, son of Gomaha, caste Uraon,
7. Loharsai, son of Baital, Caste Nagvanshi,

   Respondents No.2 to 7 are resident of village Chiknipani, Tahsil Pathalgaon, District Jashpur (Chhattisgarh)
8. The Presiding Officer, Booth No.171

12/1/07

for Respondent No-1 17/1/07

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Received Sunil Sahu 17/1/07 Pm. Parey Kotecha Adv

(2)

9. The Presiding Officer, Booth No.172
10. Presiding Officer, Booth No.173,
11. State of Chhattisgarh, through the Secretary, Deptt. of Panchyayat D.K.S. Bhawan, Raipur (CG)
12. The Sub Divisional Officer, Tahsil Pathalgaon, Distt. Jashpur (CG)
13. The Returning Officer, Gram Panchayat Election Pathalgaon.

**WRIT APPEAL UNDER RULE 157 SUB CLAUSE 10 OF THE CHHATTISGARH HIGH COURT RULE, 2005**

W.A. 3/07

XI-HC-78

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**मामला क्रमांक** W.A. 3/07 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DB: - Hon'ble Shri L.C. Bhadoo &**

**Hon'ble Shri Dhirendra Mishra, JJ.**

**14-2-2007:-**

Shri Prashant Jaiswal, Sr. Advocate with Shri Vinay Pandey, counsel for the appellants in Writ Appeals No.3/2007 and 4/2007.

Miss Sharmila Singhai, counsel for respondent No.1.

Shri U.N.S. Deo, Govt. Advocate for the State.

In Writ Appeal No.3/2007 filed by Philmon and Writ Appeal No.4/2007 filed by Rameshwar Prasad, similar point of law is involved, therefore, they are being disposed of by this common order.

These writ appeals have been preferred by the appellants challenging legality, propriety and correctness of the order dated 10th January 2007 passed by the learned Single Judge in Writ Petition Nos.1411/2005 filed by Janki Kujur, respondent No.1 herein in W.A. No.3/2007 and 1410/2005 filed by Masatram, respondent No.1 herein in W.A. No.4/2007.

Brief facts leading to filing of these writ appeals are that respondent No.1 herein namely Janki Kujur was elected as Sarpanch of Gram Panchayat Chiknipani whereas, other respondent No.1 namely, Masat Ram was elected as Sarpanch of Gram Panchayat Ludeg. Their election was questioned by petitioners namely, Philoman and Rameshwar Prasad by filing election petitions under Section 122 of the Chhattisgarh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (for short 'Adhiniyam, 1993') on the ground that their valid votes were put in the category of invalid votes, thereby rejected valid votes illegally, and invalid votes of

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respondent No.1 herein were illegally accepted as valid votes. Both election petitions were allowed by the prescribed authority vide order dated 18-3-2005 ordering re-count in both election petitions. Pursuant thereto, recounting was done in the case of Janki on 21-3-2005 and in the case of Masatram, recounting was done on 20-3-2005. Those orders were challenged before the learned Single Judge in the above writ petitions. Vide impugned orders, learned Single Judge came to the conclusion that the prescribed authority ordered for recounting without following procedure as envisaged in the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (for short 'the Rules, 1995') as also that the election petition was not in consonance with Rule 5 of the Rules, 1995, therefore, order dated 18-3-2005 whereby recount was ordered and order dated 21-3-2005 whereby result was announced after recounting were quashed in the case of Janki Kujur. Similarly, in the case of Masat Ram, orders dated 18-3-2005 and 20-3-2005 were quashed.

We have heard learned counsel for the parties.

Learned counsel for the appellants submitted that as far as order dated 18-3-2005 for recount of the votes is concerned, he has no objection if the matter is remanded back to the prescribed authority after setting aside the said order, as the prescribed authority passed that order without following procedure as envisaged in Rules 11 & 12 of the Rules, 1995, the trial of the election petition can be ordered in accordance with Rules, 1995. As far as dismissal of the election petition itself is concerned, that is not in consonance with the settled law, as the material

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facts in consonance with Rule 5 of the Rules, 1995 were already pleaded by the appellants.

On the other hand, Miss Sharmila Singhai submitted that impugned order passed by the learned Single Judge dismissing the election petition of the appellant herein is correct.

In view of the submission made by learned counsel for the appellants herein, we are required to give our finding only on the point as to whether learned Single Judge was right in dismissing the election petition itself filed by the appellants herein. In this connection, relevant rule is Rule 5 of the Rules, 1995 which has been reproduced in the impugned order which envisages that

"**5.Contents of the petition.-** An election petition shall-

(a) contain a concise statement of all material facts on which the petitioner relies:

(b) set forth with sufficient particulars, the grounds on which the election is called in question;"

In this context, we have to peruse pleadings of the petitioners in their election petitions. In the case of Philmon, para-4 of the election petition discloses that on 3 polling stations valid votes of the petitioner were deliberately put in the category of invalid votes. 6 invalid votes of respondent No.1 (returned candidate) were put in the category of valid votes and they were counted as valid votes. Even valid votes and invalid votes of polling station Nos. 171 and 172 were not made known to the petitioners or his agents. In the same manner, 6 valid votes of the petitioner of polling station No.173 were put in the category of invalid votes

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and efforts were made by the presiding officer to ensure defeat of the petitioner and respondent No.1 was unduly benefited, thereby petitioner was declared defeated by a margin of one vote whereas, earlier the petitioner was declared elected by a margin of 4 votes. Prayer of recount made by the petitioner was rejected by the presiding officer.

In the case of Rameshwar, material facts regarding recount have been mentioned in paras-2, 3, 6 and 7 of the election petition. In para-2, it has been mentioned that in order to benefit respondent No.1, 20% valid votes of the petitioner were declared as invalid by respondents No.9 to 14 whereas in those ballot papers clear seal was in favour of the petitioner. An objection was raised by the petitioner before the presiding officer that his valid votes are being mixed in the invalid votes but no heed was paid to the objection of the petitioner. The petitioner and his agents were not allowed to inspect ballot papers and in hurry, valid votes were declared invalid. The election agents were not given counting slips. For undue favour given to respondent No.1, respondent No.15 returning officer was informed about the activities of the presiding officer, but no intervention was made.

Now, question is that as to whether above facts in the above election petitions, constitute a concise statement 'of all material facts on which the petitioner relies'. The settled law for recount of votes is laid down by the Apex Court in the matters of **T.A. Ahammed Kabeer V. A.A. Azeez & others** reported in **(2003) 5 SCC 650** and **Vadivelu V. Sundaram and others** reported in **(2000) 8 SCC 355.** In the case of **T.A. Ahammed Kabeer** (Supra) the Apex Court held that

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"It is true that a re-count is not to be ordered merely for the asking or merely because the court is inclined to hold a re-count. In order to protect the secrecy of the ballots the court would permit a re-count only upon a clear case in that regard having been made out. To permit or not to permit a re-count is a question involving jurisdiction of the court. Once a re-count has been allowed the court cannot be shut its eyes to the result of re-count on the ground that the result of re-count as found is at variance with the pleadings. Once the court has permitted re-count within the *well-settled parameters of exercising jurisdiction in this regard*, it is the result of the re-count which has to be given effect to".

In the case of **Vadivelu** (Supra), the Apex Court held that

"Re-count of votes could be *ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting*. *The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes*. If only the court is satisfied about the truthfulness of the allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegation of

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illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it was materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties."

**Emphasis supplied**

Therefore, as per the ratio of above decisions, in the first instance, the petitioner who filed election petition is required to plead all material facts constituting ground for re-count. There must be specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting, there was improper acceptance of invalid votes or improper rejection of valid votes.

The Apex Court in the matter of **M. Chinnasamy V. K.C. Palanisamy and others** reported in **(2004) 6 SCC 341** held that

"For re-counting parties are required to plead material facts, as regard as to which category of irregularities as enumerated in the election petition occurred at which centre and at what time. The details as regards tables, at which such objections were raised to be disclosed. The names of the counting agents be disclosed. The petitioner is required to disclose the details of the names of polling stations, counting centres, tables, particulars of round of the counting of votes in relation whereto alleged irregularities had

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taken place under all the four categories and basis of material facts and particulars."

Based on above principle, if we examine case of the appellants herein, in the case of Philmon, only it has been mentioned that valid votes of the petitioner were put in the category of invalid votes. 6 invalid votes of the respondent No.1 (returned candidate) were put in the category of valid votes and no information was given to the petitioner and his election agents regarding valid and invalid votes of election Centre Nos. 171 and 172. 6 votes of the petitioner of election centre No.173 were put in the category of invalid votes.

After perusal of election petitions, we are of the considered opinion that allegation of the petitioner in para-4 of the election petition are bereft of material facts and sufficient particulars in order to pass order for re-count. As per Sub-rule (2) of Rule 76, at the time of counting, candidate or his agents are entitled to have reasonable opportunity to inspect ballot papers. Even though it has been mentioned that 6 valid votes of the petitioner were put in the category of invalid votes and 6 invalid votes of the respondent No.1 were put in the category of valid votes, but no particulars of those ballot papers has been mentioned in the petition. The rest of allegations are vague in nature. No specific allegation regarding each and every ballot paper, counting table, name of the election agent has been mentioned in respect of each irregularity committed. Similarly, in the election petition filed by Rameshwar, allegation of the petitioner, as narrated above, are totally vague and no material facts and sufficient particulars have been pleaded regarding ballot papers, counting table,

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name of election agent in respect of each irregularity committed by the counting officer.

Therefore, both election petitions were lacking in "all material facts" and sufficient particulars in order to constitute cause of action for recounting of votes. Hence, election petitions lacking in "all material facts" and sufficient particulars have rightly been dismissed by the learned Single Judge.

In the circumstances, we do not find any illegality or infirmity in the orders of the learned Single Judge.

In the result, both the writ appeals being devoid of merits, are liable to be dismissed and they are hereby dismissed.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**

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